Superintendent of Land & Surveys Miri Division & Anor v Madeli bin Salleh (suing as Administrator of the Estate of the deceased, Salleh bin Kilong)

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 01–1 OF 2006(Q)
ALAUDDIN, ARIFIN ZAKARIA AND AZMEL FCJJ
8 OCTOBER 2007

Native Law and Custom — Land dispute — Customary rights over land — Evidence of occupation of land — No extinguishment of respondent's right over land — Declaration of land by State Government to be reserved for development — Claim for compensation for loss of land

Native Law and Custom — Land dispute — Customary rights over land — Evidence of occupation of land — Whether Order IX of 1875 gives recognition to native rights over land — Whether 1921 Order extinguished native rights over land

Native Law and Custom — Land dispute — Customary rights over land — Whether actual physical presence necessary for claim of rights over land — Whether respondent lost right over land by reason of abandonment or non-occupation

Statutory Interpretation — Retrospective operation — Effect of impairing existing right — No retrospective effect unless clearly indicated in statute

The respondent (plaintiff in the court below) instituted this action seeking declarations, inter alia, that the respondent was at all material times a licensee under native customary rights of all that parcel of land situated at Miri/Pujut Road, measuring approximately 6.00 acres in area, and forming part of Lot 660 Block 8 Miri Concession Land District and that the act of the appellants (defendants in the court below) in declaring the said land as a park and later developing it into a school constituted a wrongful interference with the respondent's enjoyment of his native customary rights. According to the respondent, for many years prior to 1 January 1958, his father and later himself had acquired and exercised native customary rights over the said land by clearing, occupying and planting rubber trees and later fruit trees.

The respondent's claim is rooted on long and continuous occupation of the said land. The second appellant, the Government of Sarawak, by Gazette notification dated 24 December 1982 declared the said land to be a Government reserve for the purpose of a park and later it was developed into a school. The respondent alleged that the said act of the second appellant without prior extinguishment of the respondent's native customary rights and payment of compensation was wrong in law and constituted wrongful interference with his rights and enjoyment of the said land. The respondent's claim was dismissed by the High Court. On appeal to the Court of Appeal, the findings of the High Court were reversed and the respondent's claim was allowed. The appellants obtained leave to appeal to the Federal Court. It was stated in the judgment that the case of *Kerajaan Negeri Selangor & Ors v Sagong Tasi* was still pending before the Federal Court.

Held, dismissing the appeal:

(1) The proposition of law as enunciated in the Australian case of *Mabo (No 2)* and the Canadian case of *Calder v AG of British Columbia* reflected the common law position with regard to native titles throughout the Commonwealth. And it was held by Brennan J, Mason CJ and McHugh J, concurring, in *Mabo (No 2)* that by the common law, the Crown may acquire a radical title or ultimate title to the land but the Crown did not thereby acquire absolute beneficial ownership of the land. The Crown's right or interest is subject to any native rights over such land (see para 20).

(2) The Rajah's Order IX of 1875 gave warning to clearers that they may 'lose all claim or title to such land' if the persons who cleared the land allowed the land to go uncared for. The order in no uncertain terms speaks of 'claim or title to such land' that had been cleared. This goes to show that as early as 1875 the Rajah had already given due recognition to native rights over land. This is further reinforced by Rajah's Order No VIII 1920 (Land Order 1920). Section 22 gives recognition to native holdings in accordance with customary laws and where possible such claim to land shall be registered. Section 30 provides for compensation to be paid should the Government resumes possession of any occupied land for any purpose (see paras 23–24).

(3) The respondent's claim in this case arose from circumstances which occurred prior to the said Ordinance, since his father and his forefather had been in occupation of the said land prior to 1922. It is not in dispute that the respondent was born on the said land in 1922. Even though the respondent admitted that he left the said land before the house on the said land was gutted by fire in 1941, but he maintained that he returned to the said land regularly to attend to the

fruits trees. He claimed, he did so, on a monthly basis. The respondent's testimony in this regard went unchallenged. This is further fortified by the evidence of PW3 the Jabatan Kerja Raya employee who visited the said land as late as 1975. He confirmed that there were fruit trees and rubber trees on the said land. The letter dated 26 March 1982 addressed to the first appellant from Temenggong Haji Munip bin Tabib, the Head of the Malay Community in Miri in support of the respondent's application for title to the said land confirmed that the respondent's father Kilong bin Dullah was in occupation of the said land before it came under Shell Concession Area (see para 26).

(4) On the issue of what is meant by 'occupation', actual physical presence is not necessary. There can be occupation without physical presence on the land provided there exist sufficient measure of control to prevent strangers from interfering. The fact that the respondent ceased to live on the land prior to the fire which gutted the house on the land in 1941 that does not mean that he ceased to be in occupation of the said land. The evidence before the court clearly established that he continued to exercise control over the said land after the said period. The respondent could not, therefore, be said to have lost his right or interest over the said land by reason of abandonment or non occupation of the said land (see para 27).

(5) There is no provision in the 1921 Order seeking to extinguish the respondent's right over the said land. All it did was to reserve the specified area of Miri District for the purpose of the operation of the Sarawak Oilfields Limited. Reading the 1921 Order, its effect is merely to reserve a specified area for the purpose of the operations of the Sarawak Oilfields Limited. Future use of the land so reserved are governed by the said order, but it did not go further to provide that land which are already in occupation by native under the customary laws ceased to have effect and continued occupation of the land by the natives shall become illegal. In the absence of such a provision in the 1921 Order, the order could not be construed to have the effect of extinguishing the rights of the native over such land which had been in existence prior to the coming into force of the said order. Such a drastic measure needs to be expressed in clear language and cannot be derived by mere implication (see para 32).

(6) To construe the 1921 Order in the manner proposed by the appellants would give the order a retrospective force. This is so because the respondent had been in occupation of the said land long before the 1921 Order. It is an established principle of construction of statute that prima facie a statute should not be interpreted retrospectively so as to impair an existing right or obligation unless that result is unavoidable on the language use (see para 33).

(7) The 1921 Order merely reserved the lands within the designated area for the operation of the Sarawak Oilfields Limited, it did not vest the lands concerned on the Sarawak Oilfields Limited (see para 35).

(8) It was not in dispute that even though the said land came to be reserved for the operation of the Sarawak Oilfields it was never taken possession by the Sarawak Oilfields for their purposes. The respondent continued to be in occupation of the said land until it was declared by gazette notification dated 24 December 1982 as land reserved for the purpose of a park, which was later developed into a school. In the circumstances the reservation of the land under the 1921 Order did not have the effect of extinguishing the rights of the respondent over the said land (see para 36).

[Bahasa Malaysia summary

Responden (plaintif di mahkamah bawahan) telah memulakan tindakan ini memohon deklarasi-deklarasi, antara lain, bahawa responden pada setiap masa matan adalah pemegang lesen di bawah hak-hak adat anak watan untuk kesemua bidang tanah yang terletak di Jalan Miri/Pujut, berukuran lebih kurang 6.00 ekar dalam kawasan, dan membentuk sebahagian daripada Lot 660 Blok 8 Tanah Daerah Konsesi Miri dan bahawa tindakan perayu-perayu (defendan di mahkamah bawahan) dalam mengisytiharkan tanah tersebut sebagai taman dan kemudian membangunkannya kepada sebuah sekolah membentuk campur tangan salah dengan nikmat responden terhadap hak-hak adat anak watannya. Menurut responden, untuk sekian lama sebelum 1 Januari 1958, bapanya dan kemudiannya dirinya memperoleh dan menggunakan hak-hak adat anak watannya ke atas tanah tersebut dengan membersihkan, menetap dan menanam pokok getah dan kemudiannya pokok buah-buahan. Tuntutan responden berasaskan penetapan berpanjangan dan berterusan atas tanah tersebut. Perayu kedua, Kerajaan Sarawak, melalui pemberitahuan Warta bertarikh 24 Disember 1982 mengisytiharkan tanah tersebut sebagai rizab Kerajaan bagi tujuan sebuah taman dan kemudiannya ia telah dibangunkan untuk sebuah sekolah. Responden mendakwa bahawa tindakan perayu kedua itu tanpa pelupusan hak-hak adat anak watan responden dan bayaran pampas an adalah salah di sisi undang-undang dan membentuk campur tangan yang salah dengan hak-hak dan nikmatnya ke atas tanah tersebut. Tuntutan responden telah ditolak oleh Mahkamah Tinggi. Semasa rayuan ke Mahkamah Rayuan, penemuan Mahkamah Tinggi telah dimansuhkan dan tuntutan responden dibenarkan. Perayu-perayu telah memperoleh kebenaran untuk merayu ke Persekutuan. Ia dinyatakan dalam penghakiman bahawa kes *Kerajaan Negeri Selangor & Ors v Sagong Tasi* masih belum selesai di Mahkamah Persekutuan.

Diputuskan, menolak rayuan tersebut:

(1) Kenyataan undang-undang sebagaimana yang dinyatakan dalam kes Australia *Mabo (No 2)* dan kes Kanada *Cader v AG of British Columbia* menggambarkan kedudukan common law berhubung hak milik anak watan seluruh Komonwel. Dan ia diputuskan oleh Brennan J, Mason CJ dan McHugh J, bersetuju, dalam *Mabo (No 2)* bahawa melalui common law, takhta kerajaan boleh memperoleh hak milik radikal atau hak milik utama ke atas tanah itu tetapi takhta kerajaan tidak memperoleh pemilikan benefisiari mutlak ke atas tanah itu. Hak atau kepentingan takhta kerajaan tertakluk kepada mana-mana hak-hak anak watan ke atas tanah sebegini (lihat perenggan 20).

(2) Aturan Rajah IX tahun 1875 memberi amaran kepada pembersih-pembersih tanah bahawa mereka boleh 'lose all claim or title to such land' jika mereka yang membersihkan tanah itu membenarkan tanah itu tidak dijaga. Aturan itu tidak dalam terma yang tidak tentu menyatakan tentang 'claim or title to such land' yang telah dilapangkan. Ini menunjukkan bahawa seawal 1875 Rajah telahpun memberi pengiktirafan kepada hak-hak anak watan ke atas tanah. Ini diperkukuhkan oleh Aturan Rajah No VII 1920 (Aturan Tanah 1920). Seksyen 22 memberikan pengiktirafan kepada keputusan anak watan menurut undang-undang adat dan di man mungkin tuntutan sebegini terhadap tanah hendaklah didaftarkan. Seksyen 30 memperuntukkan agar pampasan dibayar sekiranya Kerajaan terus memiliki apa-apa tanah yang diduduki bagi apa- apa tujuan (lihat perenggan 23–24).

(3) Tuntutan responden dalam kes ini timbul daripada keadaan yang timbul sebelum Ordinan tersebut, memandangkan bapanya dan nenek moyangnya telah menetap atas tanah tersebut sebelum 1922. Ia tidak dipertikaikan bahawa responden dilahirkan atas tanah tersebut pada tahun 1922. Meskipun responden mengakui bahawa beliau meninggalkan tanah tersebut sebelum rumah atas tanah itu dibakar api pada tahun 1941, namun beliau menegaskan bahawa beliau sering pulang menjenguk tanah itu untuk menjaga pokok buah-buahan. Beliau mengatakan, beliau berbuat begitu, setiap bulan. Pengakuan responden berhubung perkara ini tidak dicabar. Ini diperkukuhkan lagi oleh keterangan PW3 pekerja Jabatan Kerja Raya yang melawat tanah itu seawal 1975. Beliau mengesahkan bahawa terdapat pokok-buah-buahan dan pokok getah atas tanah tersebut. Surat bertarikh 26 Mac 1982 telah dialamatkan kepada perayu pertama daripada Temenggong Haji Munip bin Tabib, Ketua Masyarakat Melayu di Miri bagi menyokong permohonan responden untuk hak milik ke atas tanah tersebut mengesahkan bahawa bapa responden Kilong bin Dullah telah

menduduki atas tanah tersebut sebelum ia terlingkung di bawah Kawasan Konsesi Shell (lihat perenggan 26).

(4) Berhubung isu apa yang dimaksudkan oleh 'occupation', kewujudan fisikal sebenar tidak perlu. Pendudukan boleh berlaku tanpa kewujudan fisikal atas tanah dengan syarat terdapat langkah kawalan yang mencukupi untuk mengelak orang yang tidak dikenali daripada masuk campur. Hakikat bahawa responden tidak tinggal atas tanah itu sebelum api membakar rumah atas tanah pada tahun 1941 tidak bermaksud bahawa beliau tidak lagi menduduki atas tanah tersebut. Keterangan di hadapan mahkamah jelas membuktikan bahawa beliau masih mempunyai kawalan ke atas tanah tersebut selepas tempoh tersebut. Responden tidak boleh, oleh itu, dikatakan telah hilang hak atau kepentingannya ke atas tanah tersebut disebabkan peninggalan atau tidak menduduki atas tanah tersebut (lihat perenggan 27).

(5) Tiada peruntukan dalam Aturan 1921 untuk memansuhkan hak responden ke atas tanah tersebut. Apa yang ia lakukan adalah untuk merizabkan kawasan yang ditetapkan Daerah Miri bagi tujuan operasi Sarawak Oilfields Limited. Dengan membaca Aturan 1921, kesannya hanyalah untuk merizabkan kawasan yang ditetapkan bagi tujuan operasi Sarawak Oilfields Limited. Penggunaan masa hadapan tanah yang dirizabkan itu dikawal oleh aturan tersebut, namun ia tidak memperuntukkan di mana tanah yang telahpun diduduki oleh anak watan di bawah undang-undang adat tidak lagi mempunyai kesan dan seterusnya pendudukan anak watan atas tanah itu adalah menyalahi undang-undang. Dalam ketiadaan peruntukan sedemikian dalam Aturan 1921, aturan itu tidak bolehlah ditafsirkan mempunyai kesan memansuhkan hak-hak anak watan ke atas tanah tersebut yang telahpun wujud sebelum aturan tersebut berkuat kuasa. Langkah drastik sedemikian perlu dinyatakan dalam bahawa yang jelas dan tidak boleh wujud hanya secara implikasi (lihat perenggan 32).

(6) Untuk mentafsirkan Aturan 1921 dalam cara yang dicadangkan oleh perayu-perayu akan menyebabkan aturan itu mempunyai kuasa kebelakangan. Ini adalah kerana responden telahpun menduduki tanah tersebut sebelum Aturan 1921 wujud. Ia suatu prinsip pembentukan statut yang tetap bahawa secara prima facie suatu statut itu tidak boleh ditafsirkan secara kebelakangan kerana ia akan menjejaskan hak atau obligasi sedia ada kecuali kesan itu tidak boleh dielakkan berdasarkan penggunaan bahasa (lihat perenggan 33).

(7) Aturan 1921 hanya merizabkan tanah-tanah yang berada dalam kawasan yang telah ditetapkan untuk operasi Sarawak Oilfields Limited, ia tidak meletak hak pemunyaan tanah-tanah berkaitan ke atas Sarawak Oilfields Limited (lihat perenggan 35).

(8) Ia tidak dipertikaikan bahawa meskipun tanah tersebut dirizabkan untuk operasi Sarawak Oilfields ia tidak dimiliki oleh Sarawak Oilfields bagi tujuan-tujuannya. Responden masih berterusan menduduki atas tanah tersebut sehingga ia diisytiharkan melalui pemberitahuan warta bertarikh 24 Disember 1982 sebagai tanah rizab bagi tujuan sebuah taman, yang kemudiannya dibangunkan menjadi sebuah sekolah. Dalam keadaan sedemikian perizaban tanah di bawah Aturan 1921 tidak mempunyai kesan memansuhkan hak-hak responden ke atas tanah tersebut (lihat perenggan 36).]

Notes

For cases on Customary rights over land, see 10 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 652–659.

For cases on effect of impairing existing right, retrospective operation generally, see 11 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 2099–2112.

Cases referred to

Adong bin Kuwau & Ors v Kerajaan Negeri Johor & Anor [1997] 1 MLJ 418 (refd)

Amodu Tijani v Secretary, Southern Nigeria [1921] 2 AC 399 (refd)

Hamit bin Matusin & Ors v Superintendent of Lands and Surveys & Anor [1991] 2 CLJ 1524 (refd)

Kerajaan Negeri Selangor & Ors v Sagong bin Tasi & Ors [2005] 6 MLJ 289 (refd)

Lee Gee Lam v Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor [1993] 3 MLJ 265 (refd)

Mabo & Ors v State of Queensland [1992] 107 ALR 1 (refd)

MBf Holdings Bhd & Anor v Houng Hai Kong & Ors [1993] 2 MLJ 516 (refd)

Newcastle City Council v Royal Newcastle Hospital [1959] 1 All ER 734 (refd)

Ngan Tuck Seng & Anor v Ngan Yin Groundnut Factory Sdn Bhd [1999] 5 MLJ 509 (refd)

Nor anak Nyawai & Ors v Borneo Pulp Plantation Sdn Bhd & Ors [2001] 6 MLJ 241 (refd)

Oyekan & Ors v Adele [1957] 2 All ER 785 (refd)

Raphael Pura v Insas Bhd & Anor [2003] 1 MLJ 513 (refd)

Sugar Refining Co v Melbourne Harbour Trust Commissioners [1927] AC 343 (refd)

Superintendent of Lands & Surveys, Bintulu v Nor Anak Nyawai & Ors and another appeal [2006] 1 MLJ 256 (refd)

Udin anak Lampon v Tuai Rumah Utom [1949] SCR 3 (refd)

Yew Bon Tew & Anor v Kenderaan Bas MARA [1983] 1 MLJ 1 (refd)

Legislation referred to

Civil Law Act 1956 s 3(1)(c)

Courts of Judicature Act 1964 s 96(a)

Federal Constitution art 162
Land Settlement Ordinance (Cap 27) s 66

Appeal from: Civil Appeal No Q-01–94 of 2000 (Court of Appeal, Kuching)

JC Fong (State Attorney-General, Sarawak) (Thomas Akin Jelimin and Kezianorella Ram bte Dato' Mat Nor, State Legal Officers with him) for the appellant.
Mekanda Singh Sandhu (Satinder Singh Sandhu with her) (Sandhu & Co) for the respondent.

Arifin Zakaria FCJ (delivering judgment of the court):

PRELIMINARY OBJECTION

[1] By notice dated 2 November 2006, the learned counsel for the respondent gave notice of preliminary objection that leave to appeal ought not to have been given in respect of questions (i) to (vi), or alternatively, this court should decline to answer these questions because they do not fall within the ambit of s 96(a) of the Courts of Judicature Act 1964 ('CJA') on the grounds stated in the notice. In this regard we are in agreement with the view expressed by Abdul Hamid Mohamed JCA (as he then was) in *Raphael Pura v Insas Bhd & Anor* [2003] 1 MLJ 513 where in delivering the majority judgment he stated at p 543:

> The first question that arises from this submission is whether, the leave having been granted by this court and now that this court (this panel) is constituted to hear the appeal, this court (this panel) should allow the respondents to re-open the issue whether the leave should have been granted or not.
>
> Generally speaking, it should not. The issue has been decided by this court. It is res judicata. A party should not be given a second bite of the cherry. A new panel of this court should not be reversing the decision of the earlier panel of the same court. There should be consistency in the judgment of the court.
>
> However, where the granting of the leave is challenged on the ground of lack of jurisdiction, this court has held that the granting of the leave to appeal to this court may still be challenged even at the hearing of the appeal.'

[2] We are of the considered view that the issue of jurisdiction have been sufficiently dealt with by this court at the leave stage, therefore, we do not propose to revisit the issue. For those reasons we dismissed the preliminary objection with costs. We then proceeded to hear the appeal proper and having heard arguments of both parties we adjourned the matter for our

consideration and decision. We now give our decision and the reasons for the same.

THE CLAIM

[3] The respondent (plaintiff in the court below), Salleh bin Kilong, brought this action seeking declarations, inter alia, that the respondent was at all material times a licensee under native customary rights of all that parcel of land situate at Miri/Pujut Road, measuring approximately 6.00 acres in area, and forming part of Lot 660 Block 8 Miri Concession Land District ('the said land'); and that the act of the appellants (defendants in the court below) to declare the said land as a park and later developed it into a school constitute a wrongful interference with the appellant's enjoyments of his native customary rights. Salleh bin Kilong had passed away before the appeal was heard by the Court of Appeal and had been substituted by his son, Madeli bin Salleh, who is also the administrator of his estate.

[4] The respondent's pleaded case is as follows: For many years prior to 1 January 1958, his father and later himself had acquired and exercised native customary rights over the said land by clearing, occupying and planting rubber trees and later fruit trees. Thus the respondent's claim is rooted on long and continuous occupation of the said land. The second appellant by gazette notification dated 24 Disember 1982 declared the said land to be a Government reserve for the purpose of a park and later it was developed into a school. The respondent alleged that the said act of the second appellant without prior extinguishment of the respondent's native customary rights and payment of compensation was wrong in law and constituted wrongful interference with his rights and enjoyment of the said land.

[5] In their defence the appellants contended, inter alia, (a) that the respondent had not acquired native customary rights over the said land as the said land was an ex-Shell Concession Area and as such no customary rights is capable of being created thereon; (b) that following from (a) the extinguishment of the respondent's customary rights does not arise; (c) that the gazette notification of 24 Disember 1982 was proof of the fact that the said land being a Government reserve for the purpose of a park; (d) that the development of the said land into a school was proper and in accordance with law; (e) that the declaration of the said land as a Government reserve is not in breach of natural justice nor in violation of Article 13 of the Federal Constitution; and (f) that the second appellant had not lost its rights and title to the said land or such rights and title had not been extinguished by reason of the respondent's occupation and/or possession of the said land.

THE AGREED ISSUES BEFORE THE HIGH COURT

[6] Before the High Court the parties agreed that the issue of liability be tried first. The parties also agreed on the issues to be tried, which are as follows:

(a) was the land claimed by the respondent as his native customary rights land as described in paragraph 3 of the statement of claim an ex-Shell Concession Area;

(b) whether, by virtue of the fact that it was an ex-Shell Concession Area, no native customary rights could be created or acquired by the plaintiff; and

(c) was there any need for the second appellant to extinguish the respondent's native customary rights over the said land and to pay compensation before declaring the said land to be a Government reserve for a park or developing it into a school.

[7] The learned counsel for the respondent admitted in his submission before the High Court that the said land fell within the Shell Concession Area. That settles issue (a). Two issues remained to be determined by the court.

FINDING OF THE LEARNED JUDICIAL COMMISSIONER

[8] Briefly the finding of the learned Judicial Commissioner on those issues are as follows:

(a) It is not disputed that the said land is situated in that area of land which was reserved for the operation of the Sarawak Shell Oilfields Limited pursuant to the Rajah Order made on 15 November 1921 ('the 1921 Order'). The 1921 Order also provided for the notification of the occupiers of the land under permit that the land so occupied belongs to the Government and that they will only be entitled to be compensated in respect of building erected or plant planted thereon. In other words the rights of the holders of the permit are not attached to the land;

(b) That the land became an excepted area not earlier than 1954. The said land was within the Shell Concession Area for the period beginning from 1921 and ending at the earliest in 1954

(c) That the areas of land reserved for Sarawak Shell Oilfields Limited falls within the definition of the 'State Land' as defined in the Land Code, which means all land for which no document of title has been issued;

(d) That from s 5(2)(i) of the Land Code, the only inference that can be made is that native customary rights may be acquired or created only over the state land;

(e) That by virtue of s 5(7) of the Land Code, being a state land the onus is on the plaintiff to prove that he occupied the said land under a permit;

(f) That the plaintiff has failed to adduce any evidence whatsoever that he occupied the said land under permit for the period it was reserved as a Shell Concession Area. The plaintiff was, therefore, in unlawful occupation of state land during the period in which it was reserved for Sarawak Shell Oils Limited; and

(g) The plaintiff has not acquired any customary rights over the said land to require any right to be extinguished or to entitle the plaintiff to any compensation.

On the above findings the learned Judicial Commissioner dismissed the respondent's claim.

FINDING OF THE COURT OF APPEAL

[9] On appeal to the Court of Appeal, the finding of the learned Judicial Commissioner was reversed and the respondent's claim was accordingly allowed. The reasons for their finding may be summarized as follows:

(a) The Judicial Commissioner clearly accepted that the appellants had adopted a plea of confession and avoidance. However, he erred in law when he failed to appreciate that once he found that the appellants had failed to discharge their burden of proving the facts relied on by them to avoid the legal consequences of their admission of the respondent's claim, the respondent became entitled to judgment. The respondent became entitled to judgment as the appellants were bound by their admission which meant that at the very least, during the years beginning from 1954 until 1 January 1958, when the said land was no longer reserved as Shell Concession Area, the respondent had acquired native customary rights to the said land;

(b) Once the appellants became bound by their admission that the respondent had acquired native customary rights over the disputed land prior to 1 January 1958 which by implication included the period commencing 1954 to 1 January 1958, it was no longer open to the Judicial Commissioner to consider whether the respondent had acquired any native customary rights between 1954 and 1 January 1958. The Judicial Commissioner had clearly misdirected himself when he did so;

(c) The Judicial Commissioner had further erred when he found that the respondent had moved out from the said land before the house on it was destroyed by fire in 1941 and that there was no evidence that the respondent had acquired native customary rights by means of s 5(2) of the Land Code. The first finding was in error since the Judicial Commissioner had ignored the respondent's evidence that even after the house had been destroyed by fire in 1941, fruit trees were still on the land and the respondent continued to visit the land once a month. Actual physical presence need not be equated with occupation. Just because the respondent did not live on the land did not mean he was no longer in control of it or did not occupy it. With regard to the second reason, it was a misdirection to apply s 5(2) of the Land Code since the methods specified in s 5(2) applied to the creation of native customary rights from 1 January 1958. On the facts, the issue before the court was whether such rights had been created or acquired between 1954 and 1 January 1958. Proviso (ii) to s 5(2) of the Land Code expressly directs that such issue should be determined by the law in force immediately prior to 1 January 1958; and

(d) On the facts, the Judicial Commissioner had also erred when he found that the respondent had not acquired native customary rights to the said land before it became part of the Shell Concession Area in 1921. The finding of the Judicial Commissioner that the respondent was in unlawful occupation of state land whilst it was part of the Shell Concession Area could not be supported.

THE APPEAL

[10] Against that finding of the Court of Appeal the appellants appeal to this court. At the leave stage this court had allowed six questions to be posed for the decision of this court which read as follows:

1. Whether rights of natives to occupy untitled land in accordance with customary laws could have subsisted or would have been lost or extinguished in the area reserved for the operations of the Sarawak Oilfields Limited pursuant to Order No XXIX 1921 made by the Rajah.

2. Whether it is legally correct to state that native customary rights were first given recognition in Sarawak under s. 66 of the Land Settlement Ordinance, 1933 in the light of the Land Regulations – Order No VIII, 1920 ('the 1920 Regulations'), the 1931 Order and 1933 Order, the Land (Classification) Ordinance 1948 and the Land Code 1958 (Cap 81).

3. Whether the words 'the law in force immediately prior to the 1st day of January 1958' in proviso (ii) of s 5(2) of the Land Code (Cap 81) of Sarawak include the 1920 Regulations which were repealed by the Order No L-2 (Land) 1931 or any other Order of Rajah, affecting land, which was not in force immediately prior to 1 January 1958.

4. Having regard to the Land (Classification) Ordinance 1948 (a law in force immediately prior to 1 January 1958) whether native customary rights as defined by s 66 of the Land Settlement Ordinance (which was in force immediately prior to 1 January 1958) could have been created or exercised in any area excepted from the Shell Concession Area (ie ex-Shell Concession Area as pleaded in paragraph 3 of the defence).

5. Whether having regard to the provisions of s 3(1) and 6 of the Civil Law Act 1956 (Act 67), and the relevant Federal, State and customary laws in Malaysia, and particularly in Sarawak, which regulate the creation, exercise, loss, abandonment and extinguishment of native rights over land; the Court of Appeal in this instant case, and indeed, the Courts in Malaysia generally, could rely on:

   (i) *Adong bin Kuwau & Ors v Kerajaan Negeri Johor & Anor* [1997] 1 MLJ 418

   (ii) *Nor anak Nyawai & Ors v Borneo Pulp Plantation Sdn Bhd & Ors* [2001] 6 MLJ 241

   which were decisions based upon:

   (i) the Australian case of *Mabo (No 2)* which is 'an authority for the proposition that the common law of Australia recognizes a form of native titles'; and

   (ii) the Canadian case of *Calder v AV of British Columbia* which held that 'common law categorically recognized native rights over land'

6. Whether the confession and avoidance in one paragraph of the defence continues to operate or have been negated where:

   (i) the facts said to have been confessed or admitted are specifically traversed or denied in other paragraphs of the same defence; and

   (ii) the issues to be tried as agreed by the parties includes 'whether, by virtue it was an ex-Shell Concession Area, no native customary right could be created or acquired by the plaintiff.'

QUESTIONS 1 AND 5

[11] These two questions are inextricably related and for that reason we shall deal with them together.

[12] In addressing the issues raised here, the starting point would be to determine when, if any, native customary rights over land was first given recognition. The respondent's counsel contended that the native customary rights had been in existence prior to the coming into force of the 1921 Order.

[13] It is the respondent's contention that prior to Brooke Rules in Sarawak there was already in existence pre-existing customary laws concerning land. As noted by A.F. Porter in his book, *The Development of Land Administration in Sarawak from the Rule of Rajah Brooke to the Present Time (1841–1965)*' at p 18, which reads:

> At the time of James Brooke's arrival in Sarawak there had for centuries been in existence in Borneo and throughout the eastern archipelago a system of land tenure originating in and supported by customary law. This body of custom is known by the generic term 'Indonesian adat'. Within Sarawak the term 'adat', without qualification, is used to describe this body of customary rules or laws; the English equivalent is usually 'native customary law' or native customary rights.

[14] The same passage was referred to by the High Court in *Nor anak Nyawai & Ors v Borneo Pulp Plantation Sdn Bhd & Ors* [2001] 6 MLJ 241. As observed by the learned judge in the said case even James Brooke himself had as far back as in 1840 given recognition to such rights. This is evident from the following passage (at p 259):

> The fruit trees about the Kampong, and as far as the jungle round, are private property, and all other trees which are in any way useful, such as the bamboo, various kinds for making bark-cloth, the bitter kony … and many others. Land, likewise, is individual property, and descends from father to son; so, likewise, is the fishing of particular rivers, and indeed most other things ….

(See *James Brooke's Journal*, Vol I, p 210 — Borneo and Celebes, as reproduced by Anthony Porter, p 19).

[15] The Court of Appeal in *Superintendent of Lands & Surveys, Bintulu v Nor Anak Nyawai & Ors and another appeal* [2006] 1 MLJ 256 endorsed the view of the learned Judge in relation to native customary rights in that the common law respects the pre-existence of rights under native laws or customs though such rights may be taken away by clear and unambiguous words in a legislation. By common law the Court Appeal must be referring to the English common law as applicable to Sarawak by virtue of s 3(1)(c) of the Civil Law Act 1956. In this regard it should be emphasized that the common law is not a mere precedence for the purposes of making a judicial decision. It is a substantive law which has the same force and effect as written law. It comes within the ter of 'existing law' under art 162 of the Federal Constitution (see *MBf Holdings Bhd & Anor v Houng Hai Kong & Ors* [1993] 2 MLJ 516 (HC) per Anuar J; judicially considered in *Lee Gee Lam v*

Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor [1993] 3 MLJ 265 (HC), perVincent Ng JC; *Ngan Tuck Seng & Anor v Ngan Yin Groundnut Factory Sdn Bhd* [1999] 5 MLJ 509 (HC) per Clement Skinner JC).

[16] It is a correct general statement of the common law that the courts will assume that the Crown intends that rights of property of the inhabitants are to be fully respected: per Deane and Goudron JJ in *Mabo & Ors v State of Queensland* [1992] 107 ALR 1 ('*Mabo No 2*'). In *Oyekan &Ors v Adele* [1957] 2 All ER 785, in an appeal from the judgment of the Supreme Court of Nigeria, Lord Denning sitting in the Privy Council stated the common law position as follows:

> In inquiring, however, what rights are recognized, there is one guiding principle. It is this: The courts will assume that the British Crown intends that the rights of property of the inhabitants are to be fully respected. Whilst, therefore, the British Crown, as Sovereign, can make laws enabling it compulsorily to acquire land for public purposes, it will see that proper compensation is awarded to every one of the inhabitants who has by native law an interest in it; and the courts will declare the inhabitants entitled to compensation according to their interests, even though those interests are of a kind unknown to English law: see *Amodu Tijani v. Southern Nigeria (Secretary) (3)* [1921] 2 AC 399), *Sakariyawo Oshodi v. Moriamo Dakolo (4)* [1930] AC 667). Furthermore, if a dispute arises between the inhabitants as to the right to occupy a piece of land, it will be determined according to native law and custom, without importing English conceptions of property law: see *Sunmonu v. Disu Raphael (5)* [1927] AC 881), *Idewu Inasa v. Sakariyawo Oshodi (6)* [1934] AC 99); except, of course, in those cases, now growing in number, where English conceptions of individual ownership have superseded previous conceptions.

[17] Similarly in *Kerajaan Negeri Selangor & Ors v Sagong bin Tasi & Ors* [2005] 6 MLJ 289, the Court of Appeal at p 302 stated:

> So far as authority is concerned, there is Amodu Tijani to which the judge referred. There is also the decision of *Adong bin Kuwau & Ors. v Kerajaan Negeri Johor & Anor* [1997] 1 MLJ 418 when this court upheld a finding by the High Court that aborigines had rights at common law over land vested in the State and that such rights existed despite the 1954 Act.

Adong was affirmed by the Federal Court but no reasoned judgment was given. The case of *Kerajaan Negeri Selangor & Ors v Sagong* is now pending before this court.

[18] The learned State Attorney General vehemently contended that *Adong and Nor ak Nyawai* should not be followed because they were decisions rooted upon the Australian case of *Mabo (No 2),* an authority for the proposition that the common law of Australia which recognizes a form of

'native titles' and the Canadian case of *Calder v AG* of British Columbia which held that the 'common law categorically recognized native rights over land'.

[19] With respect, we are of the view that the proposition of law as enunciated in these two cases reflected the common law position with regard to native titles throughout the Commonwealth. And it was held by Brennan J, Mason CJ and McHugh J, concurring, in *Mabo (No 2)* that by the common law, the Crown may acquire a radical title or ultimate title to the land but the Crown did not thereby acquire absolute beneficial ownership of the land. The Crown's right or interest is subject to any native rights over such land. They adopted the view of the Privy Council in *Amodu Tijani v Secretary, Southern Nigeria* [1921] 2 AC 399, where the Privy Council in an appeal from the Supreme Court of Nigeria held that the radical title to land held by the White Cap Chiefs of Lagos is in the Crown, but a full usufructuary title vests in a chief on behalf of the community of which he is head. That usufructuary title was not affected by the cession to the British Crown in 1861; the system of Crown grants must be regarded as having been introduced mainly, if not exclusively, for conveyancing purposes. At p 407 Viscount Haldane observed:

> In the light afforded by the narrative, it is not admissible to conclude that the Crown is generally speaking entitled to the beneficial ownership of the land as having so passed to the Crown as to displace any presumptive title of the natives. In the case of *Oduntan Onisiwo v. Attorney–General of Southern Nigeria (2)*, decided by the Supreme Court of the colony in 1912, Osbourne CJ laid down as regards the effect of the cession of 1861, that he was of the opinion that 'the ownership rights of private landowners, including the families of the Idejos, were left entirely unimpaired, and as freely exercisable after the Cession as before.' In this view their Lordships concur. A mere change in sovereignty is not to be presumed as meant to disturb rights of private owners; and the general terms of a cession are prima facie to be construed accordingly. The introduction of the system of Crown grants which was made subsequently must be regarded as having been brought about mainly, if not exclusively, for conveyancing purposes, and not with a view to altering substantive titles already existing. No doubt questions of difficulty may arise in individual instances as to the effect in law of the terms of particular documents. But when the broad question is raised as to what is meant by the provision in the Public Lands Ordinance of 1903, that where the lands to be taken are the property of a native community, the head chief may sell and convey it, the answer must be that he is to convey a full native title of usufruct, and that adequate compensation for what is so conveyed must be awarded for distribution among the members of the community entitled, for apportionment as the Native Council of the District, with the sanction of the Governor, may determine. The chief is only the agent through whom the transaction is to take place, and he is to be dealt with as representing not only his own but the other interests affected.

[20] We are conscious of the fact that in this case we are dealing with individual right not communal right, but in our view the principle applicable is the same.

[21] What was then the adat law commonly practice by the native at the time of the arrival of James Brooke. This is reflected in the Rajah's Order IX of 1875 which made specific reference to the common practice among native community to make clearings of old jungle and afterwards abandoning them. The said order reads:

> Whereas it is a common practice among the native community to make large clearings of old jungle and afterwards abandon them, I hereby direct that should any clearance of the kind be made in future, and the persons who cleared the ground allow the same to go uncared for, they will lose all claim or title to such land; and should any one be desirous of making gardens thereon, they will be permitted to become squatters; and notice is hereby given that should the original clearers try by any means to molest any such squatters they will render themselves liable to be fined at the rate of $10 (ten dollars) per hundred fathoms square for all the land they may have cleared, they having destroyed useful jungle produce, such as firewood, rattans etc, for no purpose.
>
> (Emphasis added.)

[22] The Order gave warning to clearers that they may 'lose all claim or *title* to such land' if the persons who cleared the land allowed the land to go uncared for. The order in no uncertain terms speaks of 'claim or title to such land' that had been cleared. This goes to show that as early as 1875 the Rajah had already given due recognition to native rights over land.

[23] This is further reinforced by Rajah's Order No VIII 1920 (Land Order 1920). Section 22 gives recognition to native holdings in accordance with customary laws and where possible such claim to land shall be registered. Section 30 provides for compensation to be paid should the Government resumes possession of any occupied land for any purpose. In s 3 of the Land Order 1920, it is provided that State Land is divided into four classes:

(a) Town Suburban Lands;

(b) Country Lands of 100 acres and over;

(c) Country Lands of under 100 acres;

(d) Native holdings.

[24] Section 22 of the same provides as follows:

(i) Under this part lands may be occupied by Natives free of all charges for the cultivation of fruit trees, padi, vegetables, pineapples, sugar cane,

bananas, yams and similar cultures in accordance with the customary laws provided that where possible claims to fruit groves and farming lands shall be registered. Records of such claims shall be kept by all Native Headman and also in the Land Office in each district.

(ii) A certificate in the form of Schedule A. of Notification No... of 1920 may be issued to registered land holders under this part.'

[25] It is to be observed that native holdings is not only recognized by the Land Order 1920, but where possible, such holdings may even be registered. Registration however, is not a necessary prerequisite for such holdings to be recognized. In the light of the above it is erroneous to hold as was held by the learned judicial commissioner in the present case that native customary rights in Sarawak was only created by s 66 by the Land Settlement Ordinance (Cap 27). We are of the view that what s 66 purported to do was to stipulate new conditions before native customary rights could be recognized after the coming into force of the said Ordinance. It does not purport to nullify native customary rights which had been acquired or recognized prior to the coming into force of the said Ordinance. In other words it has no retrospective force. The respondent's claim in this case arose from circumstances which occurred prior to the said Ordinance, since his father and his forefather had been in occupation of the said land prior to 1922. It is not in dispute that the respondent was born on the said land in 1922. Even though the respondent admitted that he left the said land before the house on the said land was gutted by fire in 1941, but he maintained that he returned to the said land regularly to attend to the fruits trees. He claimed, he did so, on a monthly basis. The respondent's testimony in this regard went unchallenged. This is further fortified by the evidence of PW3 the Jabatan Kerja Raya employee who visited the said land as late as 1975. He confirmed that there were fruit trees and rubber trees on the said land. The letter dated 26 March 1982 addressed to the first appellant from Temenggong Haji Munip bin Tabib, the Head of the Malay Community in Miri in support of the respondent's application for title to the said land confirmed that the respondent's father Kilong bin Dullah was in occupation of the said land before it came under Shell Concession Area.

[26] On the issue of what is meant by 'occupation', we agree with the view of the Court of Appeal that actual physical presence is not necessary. There can be occupation without physical presence on the land provided there exist sufficient measure of control to prevent strangers from interfering: See *Newcastle City Council v Royal Newcastle Hospital* [1959] 1 All ER 734; which was followed by the local case of *Hamit bin Matusin & Ors v Superintendent of Lands and Surveys & Anor* [1991] 2 CLJ 1524. Therefore, following the above authorities, the fact that the respondent ceased to live on

the land prior to the fire which gutted the house on the land in 1941 that does not mean that he ceased to be in occupation of the said land. The evidence before the court clearly established that he continued to exercise control over the said land after the said period. The respondent could not, therefore, be said to have lost his right or interest over the said land by reason of abandonment or non occupation of the said land.

[27] At this juncture it is appropriate to consider the effect of the 1921 Order vis a vis the respondent's rights or interest over the said land

[28] The 1921 Order reserved certain specified area in the Miri District for the operation of the Sarawak Oilfields Limited. It is common ground that the said land fell within the said concession area (the Shell Concession Area). For ease of reference we reproduce below the 1921 Order:

Order No XXIX 1921.

Regulations for issue of Land Permits in Miri District

1. The area of land in Miri District which is bounded approximately by a line commencing at Tanjong Lobang and thence proceeding inland along the northern eastern side of the Miri hills to the confluence of the Sungei Dalam and the Miri River thence along the bank of that river to and so as to include Lutong and thence along the seashore to Tanjong Lobang is with the exception of such parts thereof as are already dedicated to Government or public purposes reserved for the operation of the Sarawak Oilfield Limited. Note. — A map showing the area so reserved may be inspected at the Government Office, Miri.

2. Notice is hereby given that no person may erect any building of a permanent nature or plant up any land within the area so reserved without having obtained a permit for the purpose.

3. No such permit may be issued unless (a) the Government Officer to whom application for the same is made is satisfied after reference to the General Manager of Sarawak Oilfields Limited that the issue of the permit will not interfere with the operations of that Company or (b) the General approves of the permit being issued.

4. All persons occupying land under permit are reminded that the land so occupied belongs to the Government and in the event of the same being required such persons may only claim compensation for any buildings erected or products planted on the land in accordance with the terms of the permit.

November 15th, 1921.

[29] The learned State Attorney-General submitted that the Court of Appeal failed to consider the legal effect of the 1921 Order. He contended that by the 1921 Order, native customary rights enjoyed by the respondent, if any, prior to the 1921 Order had been lost or extinguished. He gave two reasons in support of his contention.

[30] Firstly, the learned State Attorney-General argued that by the 1921 Order the said land became reserved land for the operation of the Sarawak Oilfields Limited. This means to say that the respondent no longer have control over the said land. The Sarawak Oilfields Limited was given a free hand to operate on the said land if it so desire. The respondent could not in law resist such a move. Under the 1921 Order it was further provided that no person may erect any building of permanent nature or plant up any land within the reserved area without having obtained a permit for the purpose. Regulations 4 of the 1921 Order also provides that all lands occupied under permit belong to the Government and in the event of the same being required the person occupying such lands may only claim compensation for any buildings erected or products planted on the land. The respondent here did not have such a permit. Therefore, the respondent has no right whatsoever over the said land.

[31] Let us consider the first point. It is not in dispute that the said land fell within the Shell Concession Area. But the real issue is; what is the legal effect of the 1921 Order on native customary rights over land falling within the Shell Concession Area which had been acquired or exercised prior to the 1921 Order. Does the 1921 Order have the effect of extinguishing those rights? The Court of Appeal relying on *Sugar Refining Co v Melbourne Harbour Trust Commissioners* [1927] AC 343 adopted the rule of statutory interpretation that 'a statute should not be held to take away rights of property without compensation unless the intention to do so is expressed in clear and unambiguous terms.' In this regard we agree with the Court of Appeal that there is no provision in the 1921 Order seeking to extinguish the respondent's right over the said land. All it did was to reserve the specified area of Miri District for the purpose of the operation of the Sarawak Oilfields Limited. What then is the effect of the said 'reservation'. Reading the 1921 Order we are of the view that its effect is merely to reserve a specified area for the purpose of the operations of the Sarawak Oilfields Limited. Future use of the land so reserved are governed by the said order, but it did not go further to provide that land which are already in occupation by native under the customary laws ceased to have effect and continued occupation of the land by the natives shall become illegal. In the absence of such a provision in the 1921 Order, we agree with the Court of Appeal that the order could not be construed to have the effect of extinguishing the rights of the native over such land which had been in existence prior to the coming into force of the said

order. Such a drastic measure needs to be expressed in clear language and cannot be derived by mere implication.

[32] We are also of the view that to construe the 1921 Order in the manner proposed by the appellants would give the Order a retrospective force. This is so because the respondent had been in occupation of the said land long before the 1921 Order. It is an established principle of construction of statute that prima facie a statute should not be interpreted retrospectively so as to impair an existing right or obligation unless that result is unavoidable on the language use: See *Yew Bon Tew & Anor v Kenderaan Bas MARA* [1983] 1 MLJ 1. We find the 1921 Order did not seek to do so. As we see it, the provisions of regulations 2 if at all is only applicable to future occupation of the land in the reserved area but not to the existing occupiers. In short we would venture to say that the reservation under the 1921 Order is subject to all existing rights under the native customs of land tenure. We hold that it is too far reaching a consequence to construe the 1921 Order to have the effect of extinguishing all existing rights that had been in existence before the coming of James Brook. The 1921 Order did not expressly say so.

[33] The other issue, advanced by the appellants was that whatever 'native rights' the respondent may have acquired prior to the 1921 Order was lost because by virtue of the 1921 Order he ceased to have control over the said land. The appellants' argument may briefly be stated as follows. By virtue of the 1921 Order the said land came into the control of Sarawak Oilfields Limited, who is a non-native. In the circumstances, the appellants contended, the respondent's right over the said land is lost. The appellants sought to rely on the judgment of RY Hedges CJ in *Udin anak Lampon v Tuai Rumah Utom* [1949] SCR 3 in support of the said contention. With respect to the learned State Attorney-General, we are unable to agree with him as the facts in the present case and that in Udin anak Lampon are totally divergent. In that case the native had by his own free will allowed the non-native to use the land in question, which is not the case here. In the present case, the respondent continued to occupy the said land without interruption until it was gazetted as Government reserve in 1982. At no time did the respondent allow the Sarawak Oilfields Limited to use the said land.

[34] Further we are of the opinion that the 1921 Order merely reserved the lands within the designated area for the operation of the Sarawak Oilfields Limited, it does not vest the lands concerned on the Sarawak Oilfields Limited. The effect of trust or reservation for a public purpose was considered by Brennan J in *Mabo (No 2)*. In that case he observed as follows:

> Where the Crown grants land in trust or reserves and dedicates land for a public purpose, the question whether the Crown has revealed a clear and plain intention to extinguish native title will sometimes be a question of fact, sometimes a question

of law and sometimes a mixed question of fact and law. Thus, if a reservation is made for a public purpose other than for the benefit of the indigenous inhabitants, a right to continued enjoyment of native title may be consistent with the specified purpose — at lease for a time — and native title will not be extinguished. But if the land is used and occupied for the public purpose and the manner of occupation is inconsistent with the continued enjoyment of native title, native title will be extinguished. A reservation of land for future use as a school, a courthouse or a public office will not by itself extinguish native title: construction of the building, however, would be inconsistent with the continued enjoyment of native title which would thereby be extinguished. But where the Crown has not granted interests in land or reserved and dedicated land inconsistently with the right to continued enjoyment of native title by the indigenous inhabitants, native title survives and is legally enforceable.

[35] We are of the view that the above observation is applicable to our present case. It is not in dispute that even though the said land came to be reserved for the operation of the Sarawak Oilfields it was never taken possession by the Sarawak Oilfields for their purposes. The respondent continued to be in occupation of the said land until it was declared by gazette notification dated 24 Disember 1982 as land reserved for the purpose of a park, which was later developed into a school. In the circumstances we are of the view that the reservation of the land under the 1921 Order does not have the effect of extinguishing the rights of the respondent over the said land.

[36] For the above reasons we agree with the finding of the Court of Appeal that the 1921 Order did not provide for the resumption of the native customary rights land or the extinguishment of such rights.

[37] Therefore, our answer to the first question would be that the rights of native to occupy untitled land in accordance with customary laws subsisted in the area reserved for the operations of Sarawak Oilfields pursuant to the 1921 Order.

[38] As for the fifth question our answer is that we wholly agree with the view expressed in *Adong bin Kuwau* and *Nor ak Nyawai* that the common law respects the pre-existence of rights under native laws or customs. That disposed of questions 1 and 5.

QUESTION 2

[39] In view of what we have said above in considering questions 1 and 5, it necessarily follows that our answer to question (2) would be in the negative.

A QUESTIONS 3, 4 AND 6

[40] In view of the stand we have taken on questions 1, 2 and 5 we do not propose to deal with questions 3, 4 and 6.

B CONCLUSION

[41] In the upshot we dismissed the appeal herein with costs. We order that this case be remitted to the High Court for assessment of damages.

C *Appeal dismissed.*

Reported by Brendan Navin Siva

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